

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON/GREENWOOD DIVISION

Patricia L. Burts,	)	
	)	Civil Action No. 8:10-cv-2475-HFF-JDA
Plaintiff,	)	
	)	<b>REPORT AND RECOMMENDATION</b>
	)	<b>OF MAGISTRATE JUDGE</b>
vs.	)	
	)	
Michael J. Astrue,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	

This matter is before the Court for a Report and Recommendation pursuant to Local Rule 73.02(B)(2)(a), D.S.C., and Title 28, U.S.C. § 636(b)(1)(B).<sup>1</sup> Plaintiff brought this action pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3) to obtain judicial review of a final decision of the Commissioner of Social Security (“the Commissioner”), denying her claim for supplemental security income (“SSI”). For the reasons set forth below, it is recommended that the Commissioner’s unopposed motion to remand pursuant to sentence four of 42 U.S.C. § 405(g) be granted.

**PROCEDURAL HISTORY**

Plaintiff filed a claim for SSI on February 7, 2007, alleging disability as of May 14, 2006.<sup>2</sup> [R. 45, 97.] The claim was initially denied on April 13, 2007 [R. 65], and was denied on reconsideration by the Social Security Administration (“the Administration”) on August

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<sup>1</sup>A Report and Recommendation is being filed in this case, in which one or both parties declined to consent to disposition by a magistrate judge.

<sup>2</sup>Plaintiff later sought to reopen a prior application and amend her onset date to the date the prior application was protectively filed, June 29, 2006. [R. 45.]

30, 2007 [R. 67]. Plaintiff requested an administrative hearing, and on April 13, 2009, Administrative Law Judge (“ALJ”) Theresa Jenkins held a hearing on Plaintiff’s claim. [R. 20–47.]

On September 11, 2009, the ALJ issued her decision that Plaintiff was not disabled under the Social Security Act (“the Act”). [R. 7–19.] On July 30, 2010, the ALJ’s findings became the final decision of the Commissioner when the Appeals Council denied Plaintiff’s request for review of the hearing decision. [R. 1–4; 20 C.F.R. § 416.1481.]

Plaintiff filed this action for judicial review on September 23, 2010. [Doc. 1.] On May 9, 2011, the Commissioner filed a motion to remand pursuant to sentence four of 42 U.S.C. § 405(g), and Plaintiff does not oppose this motion. [Doc. 16.] Specifically, the Commissioner contends that the ALJ did not properly determine Plaintiff’s residual functional capacity and whether Plaintiff met or equaled listing 12.05C, 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.05C. [Doc. 16-1.]

### **RECOMMENDATION**

Wherefore, based upon the Commissioner’s unopposed motion to remand, the Court recommends that the Commissioner’s motion be GRANTED, the Commissioner’s decision be REVERSED, and the case be REMANDED to the Commissioner for further administrative action.

IT IS SO RECOMMENDED.

May 10, 2011  
Greenville, South Carolina

s/Jacquelyn D. Austin  
UNITED STATES DISTRICT JUDGE